

REMARKS

In response to the above-identified Office Action, Applicant traverses the Examiner's rejection to the claims and seeks reconsideration thereof. Claims 1-129 are now pending in the present application. In this response, Claims 83, 91, 94, 100, 103, 110 and 120 have been amended, no claims have been added and no claims have been cancelled.

I. Claim Amendments

Claims 83, 91, 94, 100, 103, 110 and 120 are amended in the instant response to clarify that the client systems generate a rating of at least a portion of the plurality of content pieces. The amendments to the claims are supported by the specification, for example, on page 18, lines 5-20. In view of the foregoing, Applicant respectfully requests entry of the attached amendment to Claims 83, 91, 94, 100, 103, 110 and 120.

II. Claim Rejections – 35 U.S.C. §102(e)

In the outstanding Office Action, Claims 1, 2, 4-7, 9, 11-17, 19-30, 32-35, 61, 62, 64-74, 76-86, 88-106 and 108-129 are rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent 6,317, 881 issued to Shah-Nazaroff et al ("Shah-Nazaroff"). Applicant respectfully traverses the rejections.

It is axiomatic that to anticipate a claim, every element of the claim must be disclosed within a single reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, the reference must disclose the identical invention in as complete detail as is found in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In regard to independent Claim 1, Applicant respectfully submits Shah-Nazaroff fails to teach at least the elements of “receiving broadcast communications including content descriptors via a first communications link from a broadcast source” and “transmitting the rating feedback via a second communications link to a remote location” as recited in Claim 1.

The Examiner alleges the “first communications link from a broadcast source” is taught in col. 6, lines 39-47 of Shah-Nazaroff and “transmitting the rating feedback via a second communications link to a remote location” is taught in col. 3, lines 56-62. See Action, page 3. Applicant has reviewed these portions of Shah-Nazaroff and fails to see where the separate elements of a “first communications link” and a “second communications link” are referenced. Instead, col. 5, lines 39-47 of Shah-Nazaroff teaches that the alleged content descriptors (questionnaires for particular programs) are downloaded from guide server 170 to system 100. As can be seen from Figure 1, communication between the guide server 170 and system 100 must be via communications medium 150. See Shah-Nazaroff, col. 5, lines 44-47. Similarly, col. 3, lines 56-58 of Shah-Nazaroff teaches system controller 110 provides feedback to programming guide server 170 over communications medium 150. Thus, Applicant is unable to discern where within these portions of Shah-Nazaroff cited by the Examiner it is taught that the alleged content descriptors and rating feedback are communicated along first and second communications links as required by Claim 1.

Moreover, this portion of Shah-Nazaroff teaches the alleged content descriptors are received by system 100 via medium 150 from server 170 and transmitted via medium 150 back to server 170. Claim 1 requires “a first communication link from a broadcast source” (emphasis added) and “a second communications link to a remote location” (emphasis added). The Examiner alleges the language of Claim 1 does not prevent the server from being characterized as both the broadcast source and remote location. See Action, page 38. Applicant respectfully disagrees and submits under basic

claim construction principles, Applicant's use of different claim terms, i.e. "broadcast source" and "remote location" must be interpreted to refer to elements differing in scope. See Forest Laboratories, Inc. v. Abbott Laboratories, 57 USPQ2d 1794 (Fed. Cir. 2001). Moreover, the claim language of Claim 1 must be interpreted in a manner which is consistent with its other dependent claims. See Robotic Vision Systems Inc. v. View Engineering Inc., 51 USPQ2d 1948 (Fed. Cir. 1999)(dependent claims reinforced a first construction of an independent claim over a second construction where the dependent claims would become improper according to the second construction because they related to a feature present in the dependent claim only under the first construction). Claims 6 and 7 recite "the remote location being linked to the broadcast source." If the broadcast source and remote location are interpreted as a single server 170 as alleged by the Examiner, the limitations of Claims 6 and 7 would be rendered meaningless as a server is not linked to itself. Thus, for at least the foregoing reasons, the Examiner has not shown that each and every element of Claim 1 is taught by Shah-Nazaroff. Since each limitation of Claim 1 is not taught by the reference anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 1 under 35 U.S.C. §102.

In regard to dependent Claims 2, 4-7, 9, 11-17, 19-30, 32-35, these claims depend from Claim 1 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 1, Shah-Nazaroff fails to anticipate Claims 2, 4-7, 9, 11-17, 19-30, 32-35. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 1 under 35 U.S.C. §102.

In regard to independent Claim 61, similar to Claim 1, Claim 61 includes the elements of "receive broadcast communications including content descriptors via a first communications link from a broadcast source" and "transmit the rating feedback via a second communications link to a remote location." The Examiner again cites to col. 6, lines 39-47 and col. 3, lines 56-62 of Shah-Nazaroff as teaching these elements. Thus, for

at least the reasons discussed in regard to Claim 1, Shah-Nazaroff fails to teach these elements of Claim 61. In addition, Claim 61 requires that the machine perform a rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback. As admitted by the Examiner on page 8 of the Action, the user rates the program, not system controller 100, 110. Thus, for at least the foregoing reason, Shah-Nazaroff fail to teach each and every element of Claim 61 therefore anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 61 under 35 U.S.C. §102.

In regard to dependent Claims 62, 64-74 and 76-82, these claims depend from Claim 61 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 61, Shah-Nazaroff fails to anticipate Claims 62, 64-74 and 76-82. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 62, 64-74 and 76-82 under 35 U.S.C. §102.

In regard to Claim 83, Shah-Nazaroff fails to teach at least the elements of “wherein the rating feedback comprises a rating generated by the client system of at least a portion of the plurality of content pieces” as recited in Claim 83. The Examiner alleges col. 3, lines 22-25 and col. 6, lines 23-59 of Shah-Nazaroff teaches a rating feedback comprising a rating of at least a portion of the plurality of content pieces. See Action, page 13. Applicant is unable to discern and the Examiner has not pointed to a portion of Shah-Nazaroff teaching that at least a portion of the rating of the rating feedback is generated by the client system. Instead, as admitted by the examiner Shah-Nazaroff teaches the user fills out questionnaires (see Action, page 2) which are then sent by the system controller 110 to the guide server 170 and then the guide server 170 generates a rating of the broadcast based on the questionnaires. See Shah-Nazaroff, col. 4, lines 20-23. Accordingly, it is the guide server 170, which the Examiner alleges is the broadcast source, which generates a rating, not a client system as required by Claim 83. Thus, for at least the foregoing reasons, Shah-Nazaroff fails to teach at least this element

of Claim 83 and anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 83 under 35 U.S.C. §102.

In regard to dependent Claims 84-86 and 88-93, these claims depend from Claim 94 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 83, Shah-Nazaroff fails to anticipate Claims 84-86 and 88-93. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 84-86 and 88-93 under 35 U.S.C. §102.

In regard to Claim 94, Shah-Nazaroff fails to teach at least the elements of “wherein the rating feedback comprises a rating generated by the client systems of at least a portion of the plurality of content pieces” as recited in Claim 94. The Examiner alleges col. 3, lines 56-62 of Shah-Nazaroff teaches transmitting a rating feedback from each of the plurality of client systems to the server and col. 3, lines 22-55 and col. 6, lines 23-59 teaches a rating feedback comprising rating of at least a portion of the plurality of content pieces. Applicant is unable to discern and the Examiner has not pointed to a portion of Shah-Nazaroff teaches at least a portion of the rating of the rating feedback generated by the client system. Instead, as admitted by the examiner Shah-Nazaroff teaches the user fills out questionnaires (see Action, page 2) which are then sent by the system controller 110 to the guide server 170 and then the guide server 170 generates a rating of the broadcast based on the questionnaires. See Shah-Nazaroff, col. 4, lines 20-23. Accordingly, it is the guide server 170, which the Examiner characterizes as the broadcast source, which generates a rating, not a client system as required by Claim 94. Thus, for at least the foregoing reasons, Shah-Nazaroff fails to teach at least this element of Claim 94 and anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 94 under 35 U.S.C. §102.

In regard to dependent Claims 95-102, these claims depend from Claim 94 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 94, Shah-Nazaroff fails to anticipate Claims 95-102. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 94-102 under 35 U.S.C. §102.

In regard to Claim 103, similar to Claims 1 and 61, Claim 103 includes the elements of “a first communications link” and “a second communications link.” The Examiner again cites to col. 6, lines 39-47 and col. 3, lines 56-62 of Shah-Nazaroff as teaching these elements. Thus, for at least the reasons discussed in regard to Claims 1 and 61, Shah-Nazaroff fails to teach these elements of Claim 103. Claim 103 further recites “wherein the rating feedback comprises a rating generated by the client systems of at least a portion of the plurality of content pieces.” The Examiner alleges col. 3, lines 22-55 and col. 6, lines 23-59 of Shah-Nazaroff teaches a rating feedback comprises a rating of at least a portion of the plurality of content pieces. See Action, page 18. Applicant is unable to discern and the Examiner has not pointed to where Shah-Nazaroff teaches at least a portion of the rating of the rating feedback is generated by the client system. Instead, as admitted by the examiner Shah-Nazaroff teaches the user fills out questionnaires (see Action, page 2) which are then sent by the system controller 110 to the guide server 170 and then the guide server 170 generates a rating of the broadcast based on the questionnaires. See Shah-Nazaroff, col. 4, lines 20-23. Accordingly, it is the guide server 170, which the Examiner characterizes as the broadcast source, which generates a rating, not a client system as required by Claim 103. Thus, Shah-Nazaroff fails to teach or suggest at least these elements of Claim 103 therefore anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 103 under 35 U.S.C. §102.

In regard to dependent Claims 104-106 and 108-111, these claims depend from Claim 103 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 103, Shah-Nazaroff fails to anticipate Claims 104-106 and 108-111. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 104-106 and 108-111 under 35 U.S.C. §102.

In regard to independent Claim 112, Shah-Nazaroff fails to teach at least the element of “the processor implements the rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback” as recited in Claim 112. The Examiner alleges the claimed processor is taught by the controller 110 of Shah-Nazaroff and further states col. 3, lines 22-32 of Shah-Nazaroff teaches generating the questionnaire for the user to rate the program and on this basis concludes Shah-Nazaroff teaches a processor implementing the rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback. See Action, page 20. Applicant respectfully submits the Examiner’s conclusion is simply incorrect at least for the reason that the explicit teachings of Shah-Nazaroff do not support the Examiner’s conclusion. Shah-Nazaroff does not expressly teach controller 110 implements a rating algorithm to rate at least a portion of the content pieces and further generates a rating feedback. Instead, Shah-Nazaroff teaches controller 110 assists in controlling the distribution of the questionnaires retrieved from guide server 170. See Shah-Nazaroff, col. 2, lines 64-67; col. 3, lines 23-67. Shah-Nazaroff teaches it is the “programming guide server 170 [that] generates a rating of the broadcast” and the viewer that answers the questionnaire. See Shah-Nazaroff, col. 4, lines 20-23. Applicant respectfully submits, merely distributing questionnaires to the viewers may not be characterized as implementing a rating algorithm to rate content pieces to generate a rating feedback as required by Claim 112. As evidenced by Applicant’s specification, generation of the rating feedback requires actual consideration and compiling by the client system of information received from the viewers about the content piece as well

as data about the content piece and the viewers which is stored within the client system. See Application, page 13, lines 1-23. Thus, the rating feedback is not generated by the client system by merely forwarding a questionnaire filled out by a viewer as taught in Shah-Nazaroff. Accordingly, for at least for the foregoing reasons, Shah-Nazaroff fails to teach at least the element of a processor of the client system that “implements the rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback” as required by Claim 112. Since Shah-Nazaroff fails to teach all the elements of Claim 112, anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 112 under 35 U.S.C. §102.

In regard to dependent Claims 113-119, these claims depend from Claim 112 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 112, Shah-Nazaroff fails to anticipate Claims 113-119. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 113-119 under 35 U.S.C. §102.

In regard to independent Claim 120, Shah-Nazaroff fails to teach at least the element of “communicating the rating feedback to the server periodically” as recited in amended Claim 120. The Examiner suggests column 6, lines 48-59 of Shah-Nazaroff directed toward storing and transmitting several responses teaches periodically communicating a batch of rating feedback since several responses may be stored before being sent to the server. See Action, pages 23, 40. Applicant respectfully disagrees with the Examiner’s conclusion. The term periodic implies something taking place at a regular interval, in this case communication of the rating feedback. Although, Shah-Nazaroff teaches questionnaires may be sent upon completion or stored and sent in batches, Shah-Nazaroff is silent as to whether there is any sort of regularity in the sending of the questionnaires. Instead, it appears it is dependent upon when a viewer completes a questionnaire, the frequency of which can not be considered periodic. For example, even when the questionnaires are sent in batches, a batch will not be achieved

until viewers complete and forward their questionnaires to the client system. Thus, it may be days, months or some other indefinite time frame before a batch is ready to send to the server. Such unpredictable and irregular transmission of a questionnaire or batch of questionnaires may not be considered periodic. Accordingly, since it is unclear from Shah-Nazaroff whether there is any regularity in sending the questionnaires to the server, the limitation of periodically sending feedback to the server as recited in Claim 120 is not met by the reference. Moreover, Claim 120 recites “wherein the rating feedback comprises a rating generated by the client systems of at least a portion of the plurality of content pieces.” As previously discussed, the portions of Shah-Nazaroff cited by the Examiner fail to teach at least a portion of the rating of the rating feedback generated by the client system. Instead, as admitted by the examiner Shah-Nazaroff teaches the user fills out questionnaires (see Action, page 2) which are then sent by the system controller 110 to the guide server 170 and then the guide server 170 generates a rating of the broadcast based on the questionnaires. See Shah-Nazaroff, col. 4, lines 20-23. Accordingly, it is the guide server 170, which the Examiner characterizes as the broadcast source, which generates a rating, not a client system as required by Claim 120. Accordingly, the Examiner has not set forth, and Applicant is unable to discern, a portion of Shah-Nazaroff teaching at least this element. For at least the foregoing reasons, Shah-Nazaroff fails to teach all the elements of Claim 120 therefore anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 120 under 35 U.S.C. §102.

In regard to dependent Claims 121-129, these claims depend from Claim 120 and incorporate the limitations thereof. Thus, for at least the reason that Shah-Nazaroff fails to teach all the elements of Claim 120, Shah-Nazaroff fails to anticipate Claims 121-129. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 121-129 under 35 U.S.C. §102.

III. Claim Rejections – 35 U.S.C. §102(b)

In the outstanding Office Action, Claims 1, 61, 83, 103 are rejected under 35 U.S.C. §102(b) as being anticipated by Hackson et. al. (WO 00/27124) ("Hackson"). Applicant respectfully traverses the rejections for at least the following reasons.

Hackson claims priority to Shah-Nazaroff and therefore teaches the same invention. Thus, in regard to Claims 1 and 61, for at least the reasons discussed in the traversal of Claims 1 and 61 over Shah-Nazaroff, Hackson fails to teach at least the elements of "receiving broadcast communications including content descriptors via a first communications link from a broadcast source" and "transmitting the rating feedback via a second communications link to a remote location" as recited in Claims 1 and 61. Instead, Hackson teaches the alleged content descriptors (questionnaires for particular programs) are downloaded from the guide server 170 to system 100 and transmitted back to the guide server 170 via a single communications medium 150, not a first and second communications link. See Hackson, page 9.

Claims 1 and 61 further require "a first communication link from a broadcast source" (emphasis added) and "a second communications link to a remote location" (emphasis added). As previously discussed, the Examiner may not rely upon the server to teach both the broadcast source and remote location as such a reading is contrary to claim construction principles and renders Claims 6 and 7 nonsensical as a server may not be linked to itself.

Moreover, in regard to Claims 61, 83 and 103, these claims require that the client system rate at least a portion of the plurality of content pieces to generate a rating feedback. As admitted by the Examiner on page 8 of the Action, the user fills out a questionnaire on the program, not system controller 100, 110. Thus, for at least the foregoing reason, Hackson fails to teach these elements of Claims 61, 83 and 103. Accordingly, since Hackson fails to teach each and every element of Claims 1, 61, 83 and

103, anticipation may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 1, 61, 83 and 103 under 35 U.S.C. §102.

IV. Claim Rejections – 35 U.S.C. §103(a)

In the outstanding Office Action, Claims 3, 8, 10, 18, 31, 36-60, 63, 75, 87 and 107 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hackson. Applicant respectfully traverses the rejection for at least the following reasons.

In regard to Claims 3, 8, 10, 18 and 31, Applicant respectfully submits these claims depend from Claim 1 and incorporate the limitations thereof. As previously discussed, Hackson claims priority to Shah-Nazaroff and teaches the same invention. Thus, for at least the reasons discussed above in the traversal of Claim 1 over Shah-Nazaroff, Hackson fails to teach or suggest at least the elements of a first communications link from a broadcast source and a second communications link to a remote location as required by Claims 3, 8, 10, 18 and 31. Instead, Hackson teaches a single communications link from and to the broadcast source. See Hackson, page 4, Figure 1. Since Hackson fails to teach or suggest each and every element of Claims 3, 8, 10, 18 and 31, a prima facie case of obviousness may not be found. For at least the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 3, 8, 10, 18 and 31 over 35 U.S.C. 103(a).

In regard to Claim 36, for at least the reasons discussed in regard to the traversal of the claims over Shah-Nazaroff, Hackson fails to teach or suggest a first and second communications link and an apparatus to perform the rating algorithm to generate a rating feedback as required by Claim 36. Instead, Hackson teaches a single communications link 150. See Hackson, Abstract. Moreover, Hackson teaches the viewer answers a questionnaire which is forwarded by controller 110 for rating by guide server 170, not the processor as required by Claim 36.

Moreover, as admitted by the Examiner, Hackson fails to teach or suggest a storage device, coupled to the processor, to store content pieces. See Action page 28. Instead, the Examiner alleges storage of content is well known in the art. Appellant respectfully disagrees that such storage is well known in the context of Applicant's invention and further submits it would not have been obvious to one of ordinary skill in the art to modify Hackson to include a storage device for storage of content. The purpose of Hackson is to create an improved method for collecting and providing viewer feedback of broadcasts for viewers as well as programming providers. Hackson does not teach or suggest a desire to facilitate viewing of content at a later time. Thus, it appears it is only upon viewing Applicant's disclosure that such a desire is contemplated. As the Examiner is no doubt aware, such hindsight reconstruction is erroneous as a matter of law. For at least the foregoing reasons, Hackson fails to teach or suggest each and every element of Claim 36 therefore a prima facie case of obviousness may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 36 over 35 U.S.C. 103(a).

In regard to Claims 37-60, Applicant respectfully submits these claims depend from Claim 36 and incorporate the limitations thereof. Thus for at least the reasons discussed in regard to Claim 36, Hackson fails to teach or suggest each and every element of Claims 37-60. For at least the foregoing reasons, Applicant respectfully submits a prima facie case of obviousness may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 37-60 under 35 U.S.C. 103(a).

In regard to Claims 63 and 75, these claims depend from Claim 61 and incorporate the limitations thereof. Thus, at least for the reasons discussed in the traversal of Claim 61 over Hackson, Hackson fails to teach at least the elements of "receiving broadcast communications including content descriptors via a first communications link from a broadcast source" and "transmitting the rating feedback

via a second communications link to a remote location” as required by Claims 63 and 75. Instead, Hackson teaches the alleged content descriptors (questionnaires for particular programs) are downloaded from the guide server 170 to system 100 and transmitted back to the guide server 170 via a single communications medium 150. See Hackson, page 4. Hackson further fails to teach the element of the client system rating at least a portion of the plurality of content pieces to generate a rating feedback as recite in Claim 61. As admitted by the Examiner on page 8 of the Action, the user fills out a questionnaire on the program, not system controller 100, 110. Thus, for at least the foregoing reason, Hackson fails to teach these elements of Claims 63 and 75. Accordingly, since Hackson fails to teach each and every element of Claims 63 and 75, a prima facie case of obviousness may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 63 and 75 under 35 U.S.C. §103.

In regard to Claims 87 and 107, Claim 87 depends from Claim 83 and Claim 107 depends from Claim 103 and incorporate the limitations thereof. Thus, at least for the reasons discussed in the traversal of Claims 83 and 103 over Hackson, Hackson fails to teach at least the elements of “a first communications link” and “a second communications link” and wherein the “rating feedback comprises a rating generated by the client systems of at least a portion of the plurality of content pieces” as required by Claims 87 and 107. Instead, Hackson teaches a single communications medium 150 and that the user fills out a questionnaire on the program, not system controller 100, 110. Thus, for at least the foregoing reason, Hackson fails to teach these elements of Claims 87 and 107. Accordingly, since Hackson fails to teach each and every element of Claims 87 and 107, a prima facie case of obviousness may not be found. Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 87 and 107 under 35 U.S.C. §103.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely Claims 1-129, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

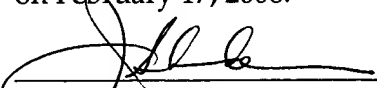
Dated: 2/17, 2006


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Jean Svoboda